IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1227 of 2005
In
SPECIAL CIVIL APPLICATION No. 18265 of 2005
With
CIVIL APPLICATION No. 8907 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRA PUNAMCHAND PANCHAL - Appellant(s)

Versus

THE STATE OF GUJRAT & 2 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Appellant(s) : 1,MR NK MAJMUDAR for Appellant(s) : 1,
MR KT DAVE, AGP for Respondent(s) : 1 - 3
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 27/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Mr. Dave, learned AGP, appearing on the advance copy of this appeal with Civil Application for

stay being served upon him, waives service for the respondents. On the joint request of the learned counsel for the parties, the matter is taken up today itself for final disposal and disposed of by this order.

2. Heard Mr. Majmudar for the appellant (who was present before the court) and Shri K.T. Dave for the respondents.

3. The appellant, who is the original petitioner working as Police Inspector, challenged the impugned notice of eviction given on 3rd September, 2005 to him by the respondents calling upon him to vacate the quarter occupied by him immediately before this court by way of writ petition i.e. Special Civil Application No.18265 of 2005 under Article 226 of the Constitution. It was dismissed by Miss R.M. Doshit, J. by a reasoned order dated 14th September, 2005 which is challenged in this appeal.

4. Mr. Majmudar for the appellant submitted that the appellant – petitioner is in occupation and in possession of the quarter since long and that when 20 more quarters are lying vacant, then the learned Single Judge ought to

have protected him. However, learned AGP Shri Dave submitted that because of the false averments made in the writ petition, the learned Single Judge dismissed the petition of the appellant – petitioner. He, therefore, submitted that when a person does not come before this court with clean hands, then he is not entitled to any discretionary relief from this court under Article 226 of the Constitution. Mr. Dave has taken us through the order passed by the learned Single Judge dismissing the writ petition. From the order passed by the learned Single Judge, it is clear that on the basis of the averments made in the writ petition, a submission was made before the learned Single Judge that his grandchild was admitted in a school at Vadodara and, therefore, till the academic term was over, he may be permitted to occupy the quarter. However, the learned Judge found that the grandchild of the appellant was hardly one year old and by making false averments in the writ petition, the petitioner wanted this court to exercise its discretionary jurisdiction under Article 226 which cannot be exercised in his favour and accordingly, the petition was dismissed. We have also carefully gone through the order passed by the learned Single Judge dismissing the petition of the appellant and from the order passed by

the learned Single Judge, it is clear that his son is carrying on business of travel agency in Vadodara itself and parking his vehicles in the vicinity of the residential quarters causing nuisance to the other inhabitants who are residing there in their respective quarters. When such a finding is recorded by the learned Single Judge, then there is no question of any interference by this court in this Letters Patent Appeal.

4.1 It was also submitted by Mr.Majmudar that about 20 quarters are lying vacant and, therefore, the appellants should be allowed to retain that quarter for some time. This submission has no substance. It may be that 20 other quarters may be lying vacant but it is clear from the order passed by the learned Single Judge that Gujarat State Police Housing Corporation requires the residential quarter occupied by the appellant – petitioner for converting the same into its administrative office. In that view of the matter, whether there are 20 quarters vacant or not is of no consequence.

5. Before parting, we must state that on transfer, the appellant is already allotted a residential quarter by the Gujarat Electricity Board. In that view of the

matter, we are of the considered opinion that the appellant – petitioner should, at once, vacate the quarter on his transfer. It is unfortunate that the appellant- petitioner who is a Police Inspector has brought this matter by way of appeal. This type of frivolous litigation should be viewed seriously. While dismissing the appeal, we would have awarded heavy exemplary cost but on the statement made at the bar by Mr.Majmudar, on the instruction from the appellant, that now the appellant will immediately vacate the quarter and hand over the possession of the same to the respondent authority, therefore, we have refrained ourselves from passing such order of cost. With these observations, this appeal is dismissed.

Civil Application for stay is dismissed as the main appeal is dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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